

MAY 06 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LARRY GIRALDES, JR.,

Plaintiff - Appellee,

v.

T. PREBULA; et al.,

Defendants - Appellants.

No. 06-15690

D.C. No. CV-01-02110-LKK/PAN

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Eastern District of California  
Lawrence K. Karlton, District Judge, Presiding

Submitted April 22, 2008<sup>\*\*</sup>

Before: GRABER, FISHER, and BERZON, Circuit Judges.

Defendants appeal from the district court's order remanding the case to the magistrate judge for further proceedings. We dismiss.

---

<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Because the district court's order contemplated further action on the summary judgment motion, it is not a final, appealable order. *See* 28 U.S.C. § 1291; *see also Way v. County of Ventura*, 348 F.3d 808, 810 (9th Cir. 2003) (explaining that a district court's ruling is not final if the court reserves the option of further modifying its ruling). Accordingly, we lack appellate jurisdiction over this interlocutory appeal.

Appellee's motion for appointment of counsel is denied as moot.

**DISMISSED.**